



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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DIVISION OF REGIONAL OFFICES
SYRACUSE REGIONAL OFFICE

June 24, 2024

Hon. Glenn T. Suddaby
United States District Court
Northern District of New York
James M. Hanley Federal Building
100 S. Clinton St.
Syracuse, New York 13261

RE: **Valencia AG, LLC v. Christopher Alexander, et al.**
Case No.: 5:24-CV-116 (GTS/TWD)

Dear Judge Suddaby:

On April 24, 2024, defendants filed a motion to dismiss plaintiff's amended complaint (ECF No. 42), to which plaintiff filed its opposition on May 29, 2024 (ECF No. 45). Defendants filed their reply on June 20, 2024. (ECF No. 50).

Plaintiff's counsel has requested that the Court schedule oral argument regarding this motion. (ECF No. 51). Defendants respectfully take no position and defer to the Court's discretion with respect to whether the request should be granted.

Defendants do, however, wish to briefly respond to the primary basis for plaintiff's counsel's request. Plaintiff's letter indicates that defendants' reply raises a "new issue" addressing "changed circumstances" regarding how the New York Cannabis Control Board and Office of Cannabis Management intend to consider license applications from the November 2023 applicant pool.

The "changed circumstances" that plaintiff's counsel references were in place at the time that plaintiff filed its opposition to defendants' motion to dismiss. Indeed, as stated in defendants' reply memorandum of law, at its public meeting on May 10, 2024, the Board adopted a resolution instructing the Office to review all applicants for adult-use dispensary licenses and microbusiness licenses who applied in 2023 and whose applications are on the November Queue. See Cannabis Control Bd., No. 2024-75, Resolution to Adopt and Approve

the Supplemental Policy Guidance for the Review of the Adult-Use Applications from the October 2023 Application Window (May 10, 2024) (ECF No. 50-2). The Office publicly stated that it would issue a license to all qualified applicants, updating the previously announced numbers of available licenses which were anticipated initially to be limited. See Office of Cannabis Management, Supplemental Policy Guidance: Application Review for the Adult-Use Cannabis October 2023 Application Window (May 10, 2024)(ECF No. 50-3). Accordingly, the Office must review and process the November Queue applications before reviewing and processing applications on the December Queue or opening additional application windows for these license types. Id. Due to this update in procedure, plaintiff's currently pending microbusiness license application will be considered by the Office in due course.

All Cannabis Control Board/Office of Cannabis Management meetings, resolutions and transcripts are public. See <https://cannabis.ny.gov/cannabis-control-board-meetings>. Additionally, New York Governor Kathy Hochul discussed this change in a press conference that was held on the same day as the meeting, May 10, 2024. See <https://www.governor.ny.gov/news/governor-hochul-directs-operational-overhaul-office-cannabis-management>. In addition to references from OCM's website, already included in defendants' reply memorandum of law (ECF Nos. 50-2, 50-3), the following sample of public articles and social media posts demonstrates that the "changed circumstances" were well publicized prior to plaintiff's opposition submission:

OCM/CCB Sources:

Off. of Cannabis Mgmt., LinkedIn (May 13, 2024), https://www.linkedin.com/posts/new-york-state-office-of-cannabis-management_nyccb-nycannabis-nyccb-activity-7195837701760200704-qIsh

Off. of Cannabis Mgmt. (@nys_cannabis), Twitter (May 10, 2024), https://x.com/nys_cannabis/status/1788959854775722436?s=42&t=VELlRd1XrTSKYOa57wWtDQ

Link to Livestream (and now recording) of May 10 Meeting: Off. of Cannabis Mgmt., *Cannabis Control Board Meeting 5.10.24*, Youtube (May 10, 2024), <https://www.youtube.com/watch?v=pSnkViVoe5M>

Secondary Sources:

Adam Jackson, *New York OCM's Alexander Reportedly Out as Regulators Approve 104 Adult-Use Licenses*, Green Market Report (May 10, 2024), <https://www.greenmarketreport.com/new-york-ocms-alexander-out-as-regulators-approve-104-adult-use-licenses/>

Samantha Christmann, *Western New York Could Soon See Many More Cannabis Dispensaries*, Buffalo News (May 10, 2024),

https://buffalonews.com/news/local/business/western-new-york-cannabis-dispensaries-marijuana-license/article_fab56ac4-0ec1-11ef-aa11-63e99d2d408b.html

Mac Sorensen, *New York State Cannabis Control Board Approves Major Regulatory Overhaul, Issues over 100 New Licenses and Enhancing Enforcement Powers*, AM NY (May 28, 2024), <https://www.amny.com/lifestyle/cannabis/new-york-state-cannabis-control-board-approves-major-regulatory-overhaul/>

New York State Cannabis Control Board Announces Change in Licensing Evaluation, Harlem World (May 10, 2024), <https://www.harlemworldmagazine.com/new-york-state-cannabis-control-board-announces-change-in-licensing-evaluation/>

Sean J. McGowan, LinkedIn (May 9, 2024), https://www.linkedin.com/posts/sean-j-mcgowan-58172350_supplemental-policy-guidance-ny-cannabis-activity-7194418059762122754-YYc?utm_source=share&utm_medium=member_ios

Colligan Law LLP, LinkedIn (May 10, 2024), https://www.linkedin.com/posts/colligan-law-llp_western-new-york-could-soon-see-many-more-activity-7194783566839377920-H-7I

In sum, as mentioned above, plaintiff filed its opposition on May 29, 2024, nearly three weeks *after* the resolution was adopted by the Board. The “changed circumstances” mentioned in plaintiff’s counsel’s letter requesting oral argument (and discussed in defendants’ reply memorandum of law) were circumstances that plaintiff’s counsel either was—or reasonably should have—been aware of at the time their opposition brief was filed. Consequently, Plaintiff could have addressed this issue in its opposition brief, rather than during a subsequent oral argument following defendants’ reply submission.

Respectfully,

s/Aimee Cowan
Aimee Cowan
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Bar Roll No. 516178

cc: David J. Hoffa, Esq. (via CM/ECF)
Joshua P. Thompson, Esq. (via CM/ECF)
Robert E. Purcell, Esq. (via CM/ECF)